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CHILE: DECREE LAW ON THE NATIONALIZATION OF ITT TELEPHONE COMPANY OF CHILE*

Decree Law No. 801
10 December 1974

IN VIEW OF the provisions of clause 10 of Article 10 of the Constitution, and the provisions of Decree Laws Nos. 1 and 128 of 1973, and 527 of 1974, and

CONSIDERING that

a. The Telephone Company of Chile was indefinitely intervened by Supreme Decree No. 1.389 of 29 September 1971 of the Ministry of Interior and by Law No. 17.910 of 27 February 1973 which, in addition, terminated the contracts between the Company and the Government resulting in an abnormal situation which should not continue;

b. The legal effects of the decreed intervention may cause, in certain cases, eventual judgments against the State or the Telephone Company of Chile, due to the existence of international insurance, which are desirable to avoid through a transaction which satisfactorily resolves the issues pending;

c. The Telephone Company of Chile is indebted in foreign exchange for notes which have been payable each semester between 15 November 1970 and 15 November 1974 for an unpaid amount of US$12,918,848.94, plus the corresponding net interest which totals US$7,886,883.60, and that as the balance of the referred to unpaid debt amounting to a total of US$16,891,532.33 could be demanded in its entirety, it is necessary to correct this situation;

d. The interest of the Government in resolving, in an equitable manner which protects the higher interests of the State, all situations of this nature and the reiterated interest of the Government in normalizing and settling the relations of the State with third parties;

e. The referred to abnormal situation adversely reflects upon the international credit of the Government and its dependent agencies; and

f. The Telephone Company of Chile, by virtue of the services which it provides, is a public utility enterprise of recognized importance to the State and the community;

The governing Junta of the Republic of Chile has resolved to dictate the following:

DECREE LAW

Article 1. In the national interest, declare to be of public utility and expropriate the Series A shares of the Telephone Company of Chile, which in

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*[Translated for International Legal Materials by John R. Pate, professor of economic integration, Instituto de Estudios Superiores de Administración (Caracas), from the official Spanish text in the Diario Oficial of December 11, 1974.

[The International Telephone and Telegraph Corporation, Sud America-Overseas Private Investment Corporation arbitration concerning liability under the U.S. investment guaranty program appears at 13 I.L.M. 1307 (1974). The Chilean Decree authorizing intervention in the ITT subsidiary appears at 10 I.L.M. 1234 (1971).]

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the future shall become the property of the Production Development Corporation (Corporación de Fomento de la Producción - CORFO).

Article 2. The Minister of Economic Coordination, for the period of ninety days from the date of publication of this Decree Law and within the terms of the provisions of Articles 3 and 5, shall be empowered to negotiate a just agreement, which shall be in the form of a contract and which shall fix the amount of indemnification and terms of payment, with the owners of the shares to be expropriated.

The contract must provide that the Chilean State is exempt from the payment of any credit, obligation or indemnification which any insurers could claim against it due to any effects which derived from the issuance of Supreme Decree 1.389 of the Ministry of Interior of 29 September 1971 or Law No. 17.910.

In representation of the Government of Chile, the Minister of Economic Coordination may sign the contract if agreement is reached within the terms established in Article 3 and 5. The contract must be approved by Supreme Decree.

Article 3. The Minister of Economic Coordination shall have the broadest powers to negotiate the contract including, among others, to fix the amount and currency of payment, the form and period for payment, interest on the amount unpaid, issuance of notes, jurisdiction over and guarantees for the payment documents issued covering the unpaid portion and interest.

Article 4. If within the period referred to in Article 2 an agreement with the present owners has not been reached, the Minister of Economic Coordination shall proceed to fix the amount of indemnification to be paid for the expropriated shares as well as the form of payment, in accordance with the provisions of Article 5.

Article 5. The amount of indemnification to be paid to the owners of the shares to be expropriated shall be agreed upon, as provided in Article 2, or fixed, as provided in Article 4, taking into account their proportion of the book value of the Telephone Company of Chile as of the issuance of Supreme Decree 1.389 of the Ministry of Interior of 29 September 1971, the profitability of the company and other important factors, except that any dividends or earnings acquired after 30 September 1971 or uncollected debts or other rights which may have been owed to the shareholders of the Telephone Company of Chile shall not be included. The period of payment shall not be less than 10 years from 1 January 1975 and the rates of interest shall not exceed those prevailing in the international market.

Article 6. The owners may appeal the amount of indemnification set and the form of payment within thirty days from publication in the Diario Oficial of the Supreme Decree fixing the amount of indemnification, to a tribunal composed of three judges (Ministros) of the Supreme Court as designated by the Court.

Article 7. The tribunal so formed shall establish its rules of procedure, bases for decision and any other necessary norms.

The tribunal shall hear the evidence and issue its ruling within 60 days from the date of notification of the claim; such ruling may be appealed in case of complaint (queja) by any of the parties to the Supreme Court which must issue its decision within 60 days. The appeal should be heard and decided in accordance with the general rules of the Court for such cases.

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Article 8. Notice of the claim must be given in accordance with the standard provisions of the Code of Civil Procedure to the Executive Vice President of the Production Development Corporation who shall be the sole representative of the national treasury (Fisco) in all matters relating to the claim, the decision of the tribunal or the appeal.

Article 9. The contract referred to in Article 2, both in regard to its celebration and fulfillment, the transfer of the shares, the documents issued or delivered in payment of the indemnification, the guarantees authorized and the interest on the unpaid portion, shall be exempt from the payment of any and all taxes, charges, or duties of any nature, especially including stamp, seal, purchase and sale, and capital gains taxes.

The payment of the indemnification and interest shall be net and, therefore, any taxes charged will be the exclusive responsibility of the Production Development Corporation.

In the event that the contract referred to in Article 2 of this Decree Law is concluded, the restrictions or applicable requirements or those which could be interpreted to be applicable, established in the laws on payments transactions, the constitution of guarantees, assumption of obligations and the signing of the corresponding documents, shall not apply.

Article 10. The Production Development Corporation, in representation of the Chilean State, shall pay the indemnification determined in the manner established, receive the expropriated shares and sign the respective documents. For this purpose the Corporation is authorized to make the necessary modifications in its budget for such time as is necessary to cancel the corresponding debt, for which the national treasury shall appropriate the necessary supplemental funds.

Article 11. All charges and prohibitions which affect the expropriated shares are hereby terminated and the interested parties may claim their rights to the indemnification. Any claims or causes of action arising out of these rights shall be within the jurisdiction of the tribunal referred in Article 6.

Article 12. Once the amount of indemnification and the form of payment has been definitively fixed by contract or in accordance with the procedure established in Articles 4, 5, 6 and 7, upon the request of the Executive Vice President of the Production Development Corporation the Telephone Company of Chile shall proceed to inscribe the referred to Series A shares in the name of the Corporation. At the same time the inscriptions in the name of the previous shareholders shall cease to have effect and the shares issued in their names shall be considered void, the Decree Law and the Supreme Decree of the Minister of Economic Coordination, or the ruling of the tribunal referred to in Article 6, or a copy of the contract, as may be the case, being sufficient title of transfer without the necessity of any other requisite.

Register in the Office of the Controller General of the Republic, publish in the Diario Oficial and insert in the official compilation of the Controller.

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